

SCOTT N. SCHOOLS (SCSBN 9990)
 United States Attorney
 JAY R. WEILL (SBN 7534)
 Chief, Tax Division
 THOMAS MOORE (ASBN 4305-T78O)
 Assistant United States Attorneys
 450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102
 Telephone: (415) 436-6935
 Facsimile: (415) 436-6748

Attorneys for the United States of America

**IN THE UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

RICKY DEAN HARDEE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

NO. C-07-80134 JSW

**NOTICE OF MOTION TO DISMISS,
 MOTION TO DISMISS, AND
 MEMORANDUM IN SUPPORT OF
 MOTION TO DISMISS**

DATE: AUGUST 24, 2007

TIME: 9:00 A.M.

PLACE: COURTROOM 2, 17TH FLOOR

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 24, 2007 at 9 a.m. before Honorable Jeffery S. White, at 450 Golden Gate Ave., San Francisco, CA Courtroom 2, 17th floor, respondent, the United States of America ("United States"), by and through its undersigned counsel, will request the Court to dismiss this action as moot.

INTRODUCTION

Petitioner, Ricky Dean Hardee, seeks to quash Internal Revenue Service ("IRS") administrative summons issued to third party recordkeeper, Charles Schwab. As set forth below, the summons has been withdrawn, and petitioner's claim should be dismissed as moot.

\\

\\

\\

FACTS

Special Agent Robert Ripley is a duly commissioned special agent employed in the Criminal Investigation Division of the Internal Revenue Service, Southeast Region, Charlotte Field Office. Special Agent Ripley's post of duty is located at 6635 Executive circle, Suite 180, Charlotte, North Carolina 28212. Declaration of Robert Ripley ("Ripley Decl."), ¶ 1. As a special agent, Ripley is (and was at all relevant times) authorized to issue Internal Revenue Service Summonses pursuant to the authority contained in Section 7602 of the Internal Revenue Code of 1986, Title 26, U.S.C.

In his capacity as a special agent, Ripley was at all times herein assigned to conduct an investigation to determine the correct federal income tax liabilities of petitioner for the taxable years of 2003 through 2006. In furtherance of the investigation, and in accordance with 26 U.S.C. § 7602, on May 10, 2007, Special Agent Ripley issued an administrative summons to Charles Schwab requesting records described therein. True and correct copy of the administrative summons is attached hereto as Exhibit B. Ripley Decl ¶ 3. On June 20, 2007, Special Agent Ripley sent a letter to Charles Schwab withdrawing the summons. True and correct copy of the letter withdrawing the summons is attached hereto as Exhibit A. Ripley Dec. ¶ 4.

ARGUMENT

____ Petitioner seeks to quash IRS administrative summons on Charles Schwab. On June 20, 2007 the IRS formally withdrew the summons at issue in this matter. Ripley Decl. ¶ 4. When a IRS summons is withdrawn, the petition to quash summons suit is rendered moot and petitioner no longer has a justifiable claim. "A petition to quash is moot when a summons had been withdrawn." **Pacific Fisheries Inc. v. United States**, 484 F. 3d. 1103, 1105 (9th Cir. 2007). Since no live case or controversy exists after an IRS summons has been withdrawn, dismissal on grounds of mootness is appropriate. See **Gillings v. United States**, 122 Fed.Appx. 360 (9th Cir. 2005). Accordingly, petitioner's claim to quash the summons issued to Charles Schwab should be dismissed as moot.

\\

CONCLUSION

For the reasons states above, this Court should dismiss as moot petitioner Ricky Dean Hardee's petition to quash IRS administrative summons issued to Charles Schwab. Accordingly, this court should grant the United States motion to dismiss.

SCOTT N. SCHOOLS
United States Attorney

/s/ Thomas Moore
THOMAS MOORE
Assistant United States Attorney
Tax Division